

Reasons For Insisting On Restriction Have Not Been Established

Claims 1-13 are currently pending. The Action alleges the following three distinct Groups (I-III).

<u>Group</u>	<u>Claims</u>
I	1, 2, and 12
II	3, 4, and 13
III	5-11

However, the Office has not shown an appropriate explanation for insisting upon restriction. The Office has not met the criteria of serious burden. If the search and examination of an entire application can be made without serious burden (which is the current situation), then the Office must examine it on the merits. Thus, the Applicants respectfully submit that the restriction requirement should be withdrawn and that all of the claims should be examined on the merits.

Groups I through III

The Action alleges that Groups I through III are related as subcombinations usable together in a single combination. "The examiner must show, by way of example, that one of the subcombinations has utility other than in the disclosed combination. Care must be taken to determine if the subcombinations are generically claimed." "The burden is on the examiner to provide an example. If Applicant proves or provides an argument, supported by facts, that the other use, suggested by the examiner, cannot be accomplished or is not reasonable, the burden is on the examiner to document a viable alternative use or withdraw the requirement." MPEP §

806.05 (d).

Applicants respectfully submit that the Action has not shown any example that one of the alleged subcombinations has utility other than in the disclosed combination. No example of "separate utility" has even been presented. The Action (e.g. item 4) has improperly alleged distinctness based solely on the presented definitions of the Groups, which definitions in turn apparently repeat the language of the independent claims. However, this is not a valid basis for restriction requirement. Rather, as previously noted, the Office must show, by way of example, that one of the alleged subcombinations has utility other than in the disclosed combination. With the Office's presented reasoning for restriction, no application could have more than one independent claim, because independent claims (like in the present application) would always be alleged as distinct.

In order to establish a valid basis for restriction, the examiner must show, by way of example, for each pairing of Groups that one of the alleged subcombinations has utility other than in the disclosed combination. The burden is on the Office to provide a valid example for each pairing of Groups. However, the Action does not provide any example for each pair of Groupings. For example, where are the examples for each of the pairs of Groups I/II, I/III, and II/III? Again, the Office has not met the required burden. On this basis it is respectfully submitted that the restriction requirement should be withdrawn.

The Restriction Requirement Is Without Legal Basis

Applicants additionally respectfully wish to point out that the Action fails to state a legally proper test for imposing a restriction requirement. The Action indicates that the restriction requirement is solely based on a showing of the alleged inventions being "distinct." Applicants also respectfully wish to point out that the Action fails to state a legally sufficient basis for imposing a restriction requirement. The statutory authority for the Patent Office to impose a restriction requirement is found in 35 U.S.C. § 121. The statute expressly states that before the Patent Office may require restriction, the inventions must be both "independent" and "distinct." The regulations that have been promulgated pursuant to this statute, 37 C.F.R. § 1.141 and 37 C.F.R. § 1.142, both expressly state that before a restriction requirement may be imposed the inventions claimed must be both independent and distinct.

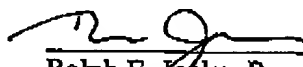
In the Action, there are only unsupported assertions that the sets of claims are "distinct." There are no assertions that the sets of claims are "independent", as is required. This standard does not comply with the statutory requirements. Therefore, the reasons asserted in the Action for seeking to impose the restriction requirements are legally insufficient due to noncompliance with the clear wording of both the statute and the regulations promulgated thereunder.

Furthermore, the Patent Office has acknowledged that before claimed inventions can be considered to be "independent" the inventions must be unconnected in design, operation, or effect. MPEP § 802.01. All the claims directed to Applicants' invention are related in design, operation, and effect. Thus, the statutory requirements are not met and no restriction requirement may be imposed.

Conclusion

Reconsideration and withdrawal of the restriction requirement and election is respectfully requested. The undersigned will be happy to discuss any aspect of the Application by telephone at the Examiner's convenience.

Respectfully submitted,



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